

**ORDER OF THE
STATE SUPERINTENDENT OF PUBLIC INSTRUCTION
AMENDING RULES**

The state superintendent of public instruction hereby rennumbers PI 35.03 (3), renumber and amends PI 35.045 (1) (d) and (e) and PI 35.05 (2); amends PI 35.02 (2), PI 35.04 (4), PI 35.04 (7), PI 35.045 (1) (intro.), (b) and (c), PI 35.045 (3) (b) 4., PI 35.05 (3) (b) (intro.), and PI 35.05 (3) (b) 1. to 5.; repeal and recreates PI 35.046 and creates PI 35.02 (1m), (5m), (6m), (7m), (8m), (9m), (9r), (10b), (10m), (12m), (15m), (17m), and (20m), PI 35.03 (3) (b), PI 35.04 (9), PI 35.045 (1) (d) and (e), PI 35.045 (3) (b) 5., PI 35.047 and PI 35.048, PI 35.05 (2) (b) to (d), and PI 35.05 (10) to (12), relating to financial reporting requirements under the Milwaukee Parental Choice Program and affecting small businesses.

ANALYSIS BY THE DEPARTMENT OF PUBLIC INSTRUCTION

Statute interpreted: s. 119.23 (7) and (10), Stats.

Statutory authority: s. 119.23 (7) (am) 2. and (d) 2., (10) (a) 3., and (11), Stats.

Explanation of agency authority:

Section 119.23 (7) (am) 2. and (d) 2., Stats., requires private schools participating in the Milwaukee Parental Choice Program (MPCP) to provide evidence of sound fiscal practices and financial viability as prescribed by the department by rule.

Section 119.23 (10) (a) 3., Stats., allows the department to specify by rule the date by which a participating private school must refund the department of any overpayment made to it.

Section 119.23 (11), Stats., gives the department authority to promulgate rules to implement and administer the entire program.

Court Decisions Directly Relevant:

There are pending civil and criminal cases in Milwaukee county related to financial issues addressed in this rule.

Related statute or rule: None.

Plain language analysis:

2003 Wisconsin Act 155 made a number of changes to the Milwaukee Parental Choice Program (MPCP), under which certain low-income pupils who reside in the city of Milwaukee may attend participating private schools in the city at state expense. The Act requires participating private schools to:

- Provide the department with evidence of financial viability.
- Provide the department with evidence of sound fiscal practices.
- Provide proof that the administrator has participated in a fiscal management training program approved by the department.

The Act also gives the state superintendent the authority to:

- Withhold aid if a participating private school is not in compliance with program requirements.

- Under certain circumstances, issue an order prohibiting a private school from participating in the program in the current year.
- Immediately terminate a private school's participation in the program if conditions at the school present an imminent threat to the health and safety of pupils.

Whenever the state superintendent issues an order terminating a school's participation, he or she must notify the parent or guardian of each pupil.

The proposed rules set forth the process by which the department will implement the provisions under the Act, which is effective starting in the 2004-05 school year. The proposed rules also specify the responsibilities of auditors and the department in determining if the school is meeting the requirements under the Act.

Summary of, and comparison with, existing or proposed federal regulations: None.

Comparison with rules in adjacent states: None.

Summary of factual data and analytical methodologies:

The rule was developed based on a review of fiscal practices contained in policy manuals for non-governmental organizations affiliated with MPCP private schools, recommended practices by national organizations, requirements that other state agencies have for private and non-profit organizations, and internal control practices contained in professional accounting and auditing literature. Financial practices and audit requirements included in the rule are similar to those required for school districts, charter schools, other state agency requirements for non-profit and for-profit organizations, and are consistent with generally accepted national standards. An overview of rule items was provided to interested parties, but discussion was limited due to the short implementation timeframe imposed under 2003 Wisconsin Act 155.

Analysis and supporting documents used to determine effect on small business or in preparation of economic impact report: N/A

Anticipated costs incurred by private sector:

The proposed rules establish how private schools participating in the MPCP program will meet the new financial reporting requirements established under 2003 Wisconsin Act 155.

In January 2004, there were 106 private schools participating in the MPCP, with a total enrollment of 12,231 students in the program. It is anticipated that the private school financial audit requirements will have a slight fiscal effect since many of the participating schools currently have limited audit procedures in place. Auditing costs for small public school districts range from \$2,000 - \$5,000 annually. It is assumed that auditing costs to participating private schools will fall within the higher end of the \$2,000 - \$5,000 range and are not considered significant. The actual costs will vary depending on the number of financial transactions and expertise of the private school's accounting staff. The status of the financial records maintained by the private school staff will directly affect the time involved in auditing those records.

Effect on small business:

See "Anticipated costs incurred by private sector."

Agency contact person: (including email and telephone)

Dennis Hanson, School Finance Auditor, 608/267-1291, dennis.hanson@dpi.state.wi.us

Place where comments are to be submitted and deadline for submission:

Written comments on the proposed rules must be submitted by September 17, 2004 to Lori Slauson at lori.slauson@dpi.state.wi.us or the Department of Public Instruction, 125 South Webster Street, P.O. Box 7841, Madison, WI 53707. Written testimony will be given the same consideration as testimony presented at the hearing.

Description of any forms (attach copies if available):

Milwaukee Parental Choice Program Budget and Anticipated Cash Flow Form.

SECTION 1. PI 35.02 (2) is amended to read:

PI 35.02 (2) "Auditor" or "certified public accountant" means a ~~person~~ firm licensed as a certified public ~~accountant~~ accounting firm by the accounting examining board under ch. 442, Stats.

SECTION 2. PI 35.02 (1m), (5m), (6m), (7m), (8m), (9m), (9r), (10b), (10k), (10m), (12m), (15m), (17m), and (20m) are created to read:

PI 35.02 (1m) "Administrator" means the individual signing the notice of intent to participate in the Milwaukee parental choice program under s. 119.23 (2) (a) 3., Stats. The administrator shall be one of the following:

(a) An owner of the private school.

(b) An individual appointed as the private school's administrator by the governing body of the organization operating the private school.

(5m) "Classroom records" means teacher recorded test scores, teacher originated grade and progress reports, teacher originated attendance records, and permanent files for individual pupils containing such data.

(6m) "Disqualified person" means a person who for a period of 7 years from the date of the order issued by the state superintendent:

(a) Had ownership interest in, or was an officer, director or trustee of a private school barred or terminated from participation in the choice program under s. 119.23 (10), Stats., or

(b) Was the administrator of the private school, a person identified as an administrator designee, or an individual responsible for the activity that resulted in an order being issued barring or terminating a private school from participation in the choice program under s. 119.23 (10), Stats.

(7m) "Educational programming" means the providing of instruction and related services to pupils enrolled in the private school.

(8m) "Financially viable" means the ability of the private school to pay for goods and services, make debt service payments, and pay other obligations as they become due.

(9m) "Generally accepted auditing standards" means the auditing standards prescribed by the accounting examining board under s. Accy 1.202.

(9r) "Generally accepted government auditing standards" means the auditing standards issued by the comptroller general of the United States.

(10b) "Individual responsible" means any person having administrative, financial, or pupil health and safety responsibilities, whether compensated or uncompensated, for the private school.

(10k) “Initial notice of intent to participate” means a notice of intent to participate submitted by a private school under this chapter that meets any of the following criteria:

(a) Did not participate in the program in the preceding school year.

(b) Participated in the program but voluntarily withdrew during the preceding or current school year.

(c) Participated in the program but was issued an order from the state superintendent terminating or barring the private school’s participation in the program during the preceding or current school year.

(10m) “Less-than-an-arms-length transaction” means a transaction where one party to the transaction is able to control or substantially influence the actions of the other. Such transactions include but are not limited to those between any of the following:

(a) Administrative and operating locations of the private school.

(b) The private school and any other organization that has as an owner, officer, or director an individual who serves in any of these capacities at the private school.

(c) The private school and an owner, director, trustee, officer, or key employee of the private school or an immediate family member of an owner, director, trustee, officer, or key employee of the private school either directly or through corporations, trusts, or similar arrangements in which they hold a controlling interest.

(12m) “Net eligible educational programming cost” means the cost of providing kindergarten through grade 12 educational programs less offsetting revenues and debt proceeds. Net eligible educational programming cost may not include penalties, fines, fees or interest charges required to be paid by the private school for not complying with any law or regulation.

(15m) “Professional standards” means both of the following:

(a) Standards established by the accounting examining board under ch. 442, Stats.

(b) Standards issued by the comptroller general of the United States for engagements where the use of generally accepted governmental auditing standards is required.

(17m) “Related parties” has the meaning given in generally accepted auditing standards.

(20m) “Scope limitation” means the inability of the auditor to perform a procedure required by professional standards, contract or law.

SECTION 3. PI 35.03 (3) is renumbered PI 35.03 (3) (title) (a).

SECTION 4. PI 35.03 (3) (b) is created to read:

PI 35.03 (3) (b) The administrator of a private school filing an initial notice of intent to participate in the Milwaukee parental choice program under sub. (1) shall no later than May 1 prior to the first school year of participation in the program, or no later than March 1 if the private school is beginning participation in the program with summer school, submit to the department a copy of the validated application for a certificate of occupancy filed with the City of Milwaukee and a copy of the validated application to the City of Milwaukee board of zoning appeals, if applicable.

SECTION 5. PI 35.04 (4) is amended to read:

PI 35.04 (4) (a) A private school under this section shall notify each applicant and the applicant's parent or guardian of acceptance or nonacceptance, in writing, within 60 days after receiving the application. The private school shall retain copies of all notices given under this section and all original applications, both accepted and nonaccepted, submitted under this chapter. The private school shall submit, with the continuing eligibility report under s. PI 35.03 (5) (b), the number of accepted and nonaccepted applications for the choice program for that school year. All corrections to applications shall be made by a single strike-through of the information to be corrected with the corrected information written in indelible ink next to the stricken item. Any correction made under this paragraph shall be initialed by the parent and the school administrator or his or her designee as required by the department. Any application not corrected as required by this paragraph shall be considered an ineligible application until a properly completed application is obtained and a copy that meets the requirements under this paragraph is provided to the department.

(b) Upon notification of acceptance under par. (a), the applicant may enroll in the private school. The applicant may not be simultaneously enrolled in and attending another private school, a home-based private educational program, a charter school under s. [**SECTION 6.** PI 35.04 \(7\) \(a\) 2. is amended to read:](http://folio.legis.state.wi.us/cgi-bin/om_isapi.dll?clientID=39886711&hitsperheading=on&infobase=stats.nfo&jump=118.40%282r%29&softpage=Document - JUMPDEST_118.40(2r)118.40 (2r), Stats., or a public school district, in or out of Wisconsin.</u></p></div><div data-bbox=)

PI 35.04 (7) (a) 2. The pupil is absent on the date specified but has attended for instruction at least one day during the school term prior to the date specified and attends for instruction at least one day after the date specified and has not enrolled in another private school, a home-based private educational program, a charter school under s. [**SECTION 7.** PI 35.04 \(9\) is created to read:](http://folio.legis.state.wi.us/cgi-bin/om_isapi.dll?clientID=39886711&hitsperheading=on&infobase=stats.nfo&jump=118.40%282r%29&softpage=Document - JUMPDEST_118.40(2r)118.40 (2r), Stats., or in a Wisconsin public school district, in or out of Wisconsin,</u> during the period of absence.</p></div><div data-bbox=)

PI 35.04 (9) (a) A private school shall engage the auditor providing the opinion statement required under s. PI 35.046 (1) (a), or another auditor, to separately audit the private school's current enrollments as reported under sub. (6). The auditor's report shall identify ineligible pupils for whom the private school has received payment, the amount of payment received for each such pupil, and additional eligible pupils qualifying the private school for a payment. The separate enrollment audits required under this subsection shall be provided to the department by December 15 following the third Friday in September enrollment, and by September 1 following the second Friday in January enrollment.

(b) The private school shall provide the auditor with a listing of all kindergarten through grade 12 pupils enrolled in the school by grade level and original classroom records the auditor requires to audit enrollment under this subsection. The listing provided under this paragraph shall identify pupils participating in the choice program.

(c) The auditor engaged for an enrollment audit under this subsection shall develop a written audit program identifying the steps and procedures followed in conducting the audit. The audit program shall be made in accordance

with professional standards and include all the procedures specified in this subsection and such other procedures as the auditor considers necessary to fulfill professional responsibilities. The auditor shall retain working papers relating to audits under this subsection for at least 3 years from the date of the department's certification of the financial audit report under s. PI 35.045 (1) (g) 3. unless requested to retain the working papers longer by the department or a law enforcement agency.

(d) The auditor shall perform all the following and other procedures agreed upon by the auditor and the department in auditing the private school's enrollment:

1. Verify totals used to compile reported enrollment and tracing totals to original classroom records.

2. Reconcile the enrollment the private school reported to the department under s. 115.30 (3), Stats., with the pupil listing provided by the private school under par. (b). If necessary, the private school shall amend the filed report under s. 115.30 (3), Stats., to correctly report enrollment.

3. Verify enrollment reported on the membership report under sub. (6) for all choice program pupils against the private school's official attendance records.

4. Determine that the private school has an original application as required by sub. (4) for all pupils identified as participating in the choice program. Any pupil for whom an application cannot be provided or contains a correction not complying with the requirements of sub. (4) shall be considered an ineligible pupil and disclosed in the auditor's report required under par. (a).

5. Verify that all choice program pupils included on the private school's official enrollment records against original classroom records and determine that they meet the requirements of sub. (7).

6. Select a sample of at least 60 other pupils identified as not participating in the choice program from original classroom records and determine that selected pupils were included in reported membership enrollments under sub. (6). The sample shall include records from each classroom. If an exception is identified, the auditor shall extend the sample test in increments of 60 records until no additional exceptions are found or all classroom records have been verified as properly included in reported enrollments. If the school has an enrollment of fewer than 60 pupils, records for all pupils shall be examined.

7. If the private school is reporting pupils enrolled in a 4-year-old kindergarten program as permitted by s. 121.004 (7) (cm), Stats., verify that the 4-year-old kindergarten program included at least 87.5 hours of outreach activities as documented by teacher logs.

8. Reconcile tuition revenues and tuition waiver pupils against listings of pupils identified as not participating in the choice program.

9. If the private school has operated a summer school program, the auditor, as part of the third Friday in September enrollment audit, shall review for clerical accuracy, documentation maintained by the school supporting summer school membership reports filed with the department.

(e) Failure of the private school to provide original classroom records as required under this subsection shall be considered a scope limitation and the auditor engaged to provide the enrollment audit under this subsection or the opinion

statement required under s. PI 35.046 (1) (a) shall disclaim an expression of an opinion regarding the eligibility of the pupils for whom classroom records are not available. Pupils for whom the auditor has disclaimed an expression are not eligible for payment under s. PI 35.05 (3).

(f) Upon review of the September enrollment audit, the department shall certify an amount due from the private school for payments made to the school for ineligible pupils or additional payments due the school for qualifying pupils. The private school shall refund to the department the amount certified as due the department within 60 days of notification. The department shall make additional payments due the school for qualifying pupils within 60 days of notification.

(g) The private school shall retain all pupil records required for audits under this subsection for at least 3 years from the date of the department's certification of the financial information report under s. PI 35.045 (1) (g) 3. unless requested to retain the records longer by the department or a law enforcement agency. The private school shall provide the department access to original records referenced in the auditor's working papers and provide copies as requested by the department.

SECTION 8. PI 35.045 (1) (intro.), (b) and (c) are amended to read:

PI 35.045 (1) (intro.) Annually, by September 1 following a school year of operation under ~~this~~ the choice program, a private school participating in the Milwaukee parental choice program shall submit, on a form provided by the department, a financial ~~audit~~ information report identifying the operating nature of the private school as required under PI 35.047 (12) (a) and accompanied by the auditor's opinion statement required under s. PI 35.046 (1) (a) containing the following information for the previous school year:

(b) ~~Asset and liability balances~~ A statement of net choice program assets at the start and end of the school year.

(c) Enrollment and full-time equivalent membership for all pupils and for pupils participating in the Milwaukee parental choice program based on audited enrollments required under s. PI 35.04 (9).

SECTION 9. PI 35.045 (1) (d) and (e) are renumbered PI 35.045 (1) (f) and (g) and as renumbered, PI 35.045 (1) (g) 3. is amended to read:

PI 35.045 (1) (g) 3. The private school's membership of pupils participating in the Milwaukee parental choice program shall be multiplied by the lesser of the amount determined under s. 119.23 (4) (b) 2., Stats., or the private school's per pupil cost under s. 119.23 (4) (b) 1., Stats. If the result is greater than the amount of the choice program payments retained by the school, an adjustment payment shall be made to the private school within 60 days of the financial ~~audit~~ information report certified by the department. If the result is less than the amount of the choice program payments retained by the private school, the private school shall refund the amount of any overpayment to the department within 60 days of notification.

SECTION 10. PI 35.045 (1) (d) and (e) are created to read:

PI 35.045 (1) (d) A statement of cash flows.

(e) Such other information necessary for the fair determination of educational programming cost.

SECTION 11. PI 35.045 (3) (b) 4. is amended to read:

PI 35.045 (3) (b) 4. Debt principal and interest payments to the private school's owners, sponsoring organization, or another related party as a result of internal financing from other funds of the school or other less-than-an-arms-length transaction. Borrowing from an endowment fund or from individuals serving on a board of directors or in an advisory capacity who do not have a proprietary interest in the school are not subject to the requirements under this subdivision. The interest rate on such borrowings may not exceed the published prime rate on the borrowing date.

SECTION 12. PI 35.045 (3) (b) 5. is created to read:

PI 35.045 (3) (b) 5. All loans from an individual to the private school must result in a cash deposit to the school's or operating organization's depository account required under s. PI 35.047 (5) (a). Unpaid reimbursements due related parties or employees of the private school shall not be considered a loan.

SECTION 13. PI 35.046 is repealed and recreated to read:

PI 35.046 Financial audit requirements. (1) A private school under this chapter shall do all of the following:

(a) Annually by September 1 following a school year in which the private school participated in the choice program, the private school shall submit to the department an independent financial audit of the private school conducted by a certified public accountant accompanied by the auditor's opinion statement that the financial information report required under s. PI 35.045 is free from material misstatement and the private school's per pupil cost and any payment adjustment is fairly presented. The audit under this subdivision shall be limited in scope to those records that are necessary for the department to make payments under s. 119.23 (4) and (4m), Stats.

(b) Have a written engagement agreement, a copy of which shall be provided to the department upon request, with any auditor providing services required by this chapter. The written agreement shall contain all of the following:

1. A statement that the auditor shall comply with generally accepted auditing standards and the requirements of this chapter. The written agreement shall also specify that the auditor shall comply with generally accepted governmental auditing standards if required by other government agencies providing funds to the private school.

2. The responsibilities of the private school and the auditor in meeting the requirements of this chapter.

3. Any other services in addition to those required by this chapter that the auditor is providing to the private school.

4. The auditor's acknowledgement that the auditor is aware that the department will rely on the work of the auditor in fulfilling its requirements under this chapter.

5. The auditor's compensation for the services the auditor is providing the private school.

(c) Balance the financial accounting system required under s. PI 35.047 (1) and provide the auditor with a trial balance of account balances.

(d) Furnish all other financial and pupil records the auditor considers necessary to provide the audit opinion statement.

(e) Approve adjusting entries recommended by the auditor recorded in the private school's financial accounting records.

(f) Retain all financial records relating to the report required under s. PI 35.045 for at least 3 years from the date of the department's certification of the financial information report under s. PI 35.045 (1) (g) 3. unless required to retain such records longer by the department or a law enforcement agency.

(g) Provide the department access to original records referenced in the auditor's working papers and provide copies as requested by the department.

(2) The auditor engaged by the private school to provide the opinion statement under sub. (1) shall develop a written audit program identifying the steps and procedures followed in conducting the audit. The audit program shall include all the procedures specified in sub. (3) and such other procedures agreed upon by the auditor and the department, and any other procedures the auditor considers necessary to fulfill professional responsibilities. The auditor shall retain working papers relating to audits under this section at least 3 years from the date of the department's certification of the financial information report under s. PI 35.045 (1) (g) 3. unless requested to retain the working papers longer by the department or a law enforcement agency.

(3) (a) The auditor shall determine that the financial report is free from material misstatement by performing procedures that in the auditor's judgment, provide reasonable assurance that the report does not contain misapplications of accounting requirements, departures from fact, or other errors or omissions. The auditor, in performing audit procedures to determine the report required under s. PI 35.045 (1) is free from material misstatement, shall consider account balances and total non-payroll related transactions with any one party to be significant if they exceed the following:

1. If the private school's net eligible educational programming cost as determined under s. PI 35.045 (1) (g) is less than \$100,000, the variance limitation shall be 4% of the reported costs.

2. If the private school's net eligible educational programming cost as determined under s. PI 35.045 (1) (g) is at least \$100,000 but less than \$1,000,000, the variance limitation shall be 2% of the reported costs.

3. If the private school's net eligible educational programming cost as determined under s. PI 35.045 (1) (g) is at least \$1,000,000 but less than \$3,000,000, the variance limitation shall be 1.5% of the reported costs.

4. If the private school's net eligible educational programming cost as determined under s. PI 35.045 (1) (g) is at least \$3,000,000 but less than \$5,000,000, the variance limitation shall be 1% of the reported costs.

5. If the private school's net eligible educational programming cost as determined under s. PI 35.045 (1) (g) is at least \$5,000,000 but less than \$10,000,000, the variance limitation shall be .7% of the reported costs.

6. If the private school's net eligible educational programming cost as determined under s. PI 35.045 (1) (g) is at least \$10,000,000, the variance limitation shall be .5% of the reported costs.

(b) The auditor shall consider accounts with a balance equal to at least 75% and individual transactions equal to at least 20% of the variance limitation amount determined under par. (a) as being significant and shall perform tests of those accounts and transactions along with other procedures considered necessary to conclude that the accounts and transactions do not contain misstatements whose effect, when aggregated with misstatements in other accounts and transactions, would exceed the variance limitation identified under par. (a) and result in a material misstatement in the private school's net eligible educational programming cost as determined under s. PI 35.045 (1) (g).

(c) The auditor shall determine if fees charged pupils are allowed as specified under s. PI 35.03 (6) (a).

(d) The auditor shall perform all of the following regarding the private school's cash and investment balances:

1. Confirm the private school's cash and investment account balances with depositories.

2. Prepare or obtain and examine a reconciliation of confirmed cash and investment account balances to the private school's accounting records. The reconciliation shall include all of the following:

a. Depository balances at the beginning of the fiscal period reconciled to the private school's accounting records.

b. Receipts per depository statement reconciled to the private school's accounting records.

c. Disbursements per depository statements reconciled to the private school's accounting records.

d. Depository balances at the end of the fiscal period reconciled to the private school's accounting records.

(e) Prepare or obtain and examine a reconciliation of payroll withholdings to remittances to authorized agencies or taxing authorities.

(f) Trace all entries on the financial information report required under s. PI 35.045 (1) to the trial balance provided by the school under sub. (1) (c).

(4) The auditor engaged under this section shall comply with the requirements of s. Accy 1.101, and with all of the following:

(a) An auditor providing financial statement compilation or review services to the private school may not perform the audit under sub. (1) (a) unless the private school makes available a trial balance, based on the school's general ledger established as part of financial accounting system under s. PI 35.047 (1), for the compilation or review services.

(b) An auditor that performs the audit under sub. (1) (a) or compilation or review services under par. (a) may not post, or prepare for posting, original or source document transactions such as cash receipts and disbursements, invoices or billings for services, billings from vendors and suppliers, payroll activity and other typical reoccurring financial transactions to the private school's general ledger.

(c) The auditor may prepare and post adjusting, correcting, and closing journal entries to the private school's general ledger that have the written approval of the private school's management. The auditor's working papers shall document evidence of management approval for all such entries resulting from financial statement compilation, review or audit.

(d) The auditor may assist in the preparation of the budget required under s. PI 35.047 (2) (b). In providing assistance, the auditor shall comply with s. Accy 1.201, regarding forecasts, and shall identify as required by the department, that such assistance was provided.

(5) The auditor engaged under sub. (1) (a) shall evaluate whether there is substantial doubt about the private school's ability to continue as a going concern for a reasonable period of time. If after considering identified conditions and events and plans of the private school's management, the auditor concludes that substantial doubt about the private school's ability to continue as a going concern for a reasonable period of time remains, the auditor's report shall include an explanatory paragraph in the opinion statement required under sub. (1) (a) to reflect that conclusion.

SECTION 14. PI 35.047 and PI 35.048 are created to read:

PI 35.047 Sound fiscal practices. (1) A private school under this chapter shall use a double entry financial accounting system that is organized in such a manner that it will enable preparation of the report required under s. PI 35.045 (1) and provide such other information to fiscally manage the private school. The accounting system shall identify all the sources of funding used in the private school's operation specifically identifying all of the following:

(a) Revenue for pupils participating in the choice program.

(b) Revenue for parent or other private-paid tuition pupils.

(c) Revenue from payments made to or due the private school from the school district for instruction provided pupils enrolled in the private school.

(d) Revenue from payments made to or due the private school from the school district for transportation of the private school's pupils.

(e) Revenue from federal, state and local governments for instructional programs, food service and facility acquisition.

(2) (a) Except as specified under par. (b), annually, prior to the start of the private school's fiscal period, the administrator of the private school shall prepare a budget for the ensuing fiscal period showing anticipated enrollments for all pupils enrolled in the school and for choice program pupils, estimated revenues and costs, and a schedule of anticipated beginning and ending net choice program assets. The budget shall identify contingent funding sources the private school will use should actual enrollments be less than expected.

(b) A private school filing an initial notice of intent to participate in the choice program under s. PI 35.03 (1) shall, by the following May 1, submit to the department the information required in par. (a) along with a schedule of monthly cash flow requirements on a form provided by the department.

(c) A private school that participated in the program under this chapter in the immediately preceding school year shall revise the information required in par. (a) to reflect revenues resulting from the school's actual third Friday in September enrollment and related required budget changes if the actual third Friday in September enrollment for all pupils or for choice program pupils varies by 20% or 20 pupils, whichever is less, from the anticipated enrollments used in the budget required under par. (a).

(d) A private school filing an initial notice of intent to participate in the choice program under s. PI 35.03 (1), shall submit to the department by the following November 1, on a form provided by the department, a budget as required in par. (a) reflecting the school's actual third Friday in September enrollments and any related changes in revenues, costs and monthly cash flow requirements.

(3) A private school shall make payment of all the following within 90 days of receipt of invoice or payment request or as per written agreement:

(a) Payments to vendors for services provided.

(b) Reimbursements to employees and other individuals for expenses incurred on behalf of the private school.

The employee or related party shall request reimbursement within the time period specified by the private school's written

policy for such reimbursement. All reimbursements shall be made on the basis of original receipts that shall be retained by the private school in support of the paid reimbursement.

(4) A private school shall make payments to employees based on written documents specifying compensation and dates for payment. The private school shall provide this information to any employee requesting it.

(5) A private school shall have an adequate system of financial internal controls that includes all of the following:

(a) Depositing all receipts and paying all disbursements from a depository account or accounts maintained solely for the private school's purposes unless the operating organization's financial accounting system provides for separate identification of the private school's revenue and expenditure transactions. The depository account or accounts used by the private school or those used by its operating organization for school purposes shall be located within the state of Wisconsin.

(b) Maintaining documentation as to the nature and source of all cash receipts.

(c) Depositing intact and separate from all other receipts of the school, payments received for choice program pupils. The private school shall maintain a record of the deposit date for all individual payments received for the choice program pupils.

(d) Using pre-numbered checks for all school disbursements, except those from a petty cash fund.

(e) Maintaining on file original invoices and payment requests supporting disbursements.

(f) Using internal control practices recommended in previous fiscal practices reports required under sub. (13).

(6) A private school or its operating organization shall be current with all of the following:

(a) Filing and withholdings payment requirements of the federal internal revenue service. If the private school or its operating organization is required to file annual information return form 990 or form 990-EZ, a copy of the information in the filed return identified as available for public inspection by the federal internal revenue service shall be provided to the department by the private school within 30 days after filing.

(b) Filing and withholdings payment requirements of the Wisconsin department of revenue.

(c) Filing requirements of the Wisconsin department of workforce development.

(d) Filing requirements of the Wisconsin department of financial institutions.

(e) Filing requirements of the Wisconsin department of regulation and licensing.

(f) Auditing requirements of federal, state and local government agencies. The private school shall provide the department with a copy of audit reports issued or revisions within 30 days of submission to the requiring government agency.

(7) A private school shall have worker's compensation coverage and shall have liability and errors and omissions insurance coverage for incidents resulting from omissions or actions of the private school's owners, directors or employees. Coverage shall be provided by an insurance company licensed to do business in the State of Wisconsin or by a non-profit, tax exempt mutual protective organization covering risks of schools of, and controlled by, a religious denomination. All coverage shall be on an occurrence form or a claims made basis. Minimum coverage shall be as follows:

(a) Worker's compensation as specified under chapter 102, Stats.

(b) Commercial general liability in the following amounts unless the coverage amounts are based on a written or documented verbal recommendation of a risk or insurance consultant.

1. For each occurrence, minimum coverage in the amount of \$1,000,000.

2. Personal injury, minimum coverage in the amount of \$1,000,000.

(c) Umbrella excess liability, an aggregate limit minimum coverage of \$5,000,000, unless the coverage amounts are based on a written or documented verbal recommendation of a risk or insurance consultant.

(d) Auto liability, a combined single limit minimum coverage of \$1,000,000 for each accident unless the coverage amount is based on a written or documented verbal recommendation of a risk or insurance consultant.

(e) Errors and omissions for school leaders, an aggregate limit minimum coverage of \$1,000,000 unless the coverage amount is based on a written or documented verbal recommendation of a risk or insurance consultant.

(f) Sexual misconduct liability, an aggregate limit minimum coverage of \$1,000,000 unless the coverage amount is based on a written or documented verbal recommendation of a risk or insurance consultant.

(8) If a private school operates or contracts for the operation of school buses with an organization other than a Wisconsin school district, the private school or the contracted operator shall have school bus insurance as required by s. 121.53, Stats. The private school may not contract for the school bus operation with an organization other than a Wisconsin school district unless the operator has provided the private school with a certificate of insurance meeting the requirements of s. 121.53, Stats.

(9) If a private school is providing or contracting for pupil transportation in vehicles other than school buses as permitted by s. 121.555, Stats., the private school shall determine that any motor vehicle so used complies with the conditions specified under s. 121.555, Stats.

(10) A private school shall, at least once every 3 years, have a written risk management and insurance evaluation by a risk or insurance consultant.

(11) A private school shall have a fidelity bond indemnifying the private school against loss resulting from dishonesty, malfeasance, or neglect by owners, officers or employees.

(12) The administrator of a private school filing an initial notice of intent to participate in the choice program under s. PI 35.03 (1) shall, by the following May 1, participate in a fiscal management training program approved by the department and shall provide the following on a notarized statement on a form provided by the department:

(a) Identification of the operating nature of the private school as one of the following:

1. Non – profit corporation.

2. Affiliation with religious organization with non-profit status.

3. For profit corporation.

4. For profit limited partnership

5. For profit partnership.

6. Sole ownership.

7. Specified other.

(b) Identification of how the private school will implement an accounting system that complies with the requirements of sub. (1).

(c) A statement that the private school shall have a written policy as required by sub. (3) (b) for expenses incurred on behalf of the private school.

(d) Identification of the written documents on which employee compensation will be based as required by sub. (4).

(e) A statement that the private school will have a system of financial internal controls as required by sub. (5).

(f) A statement that the administrator of the private school and the operating organization of the private school are current with filings and withholdings payments under sub (6).

(g) A statement that the private school will have the minimum insurance coverage as specified under sub. (7) unless a different amount is recommended based on the written recommendation of a risk or insurance consultant. The private school shall provide the department with a certificate of insurance or other evidence of having obtained the required insurance by August 1 or prior to May 1 if the private school begins initial participation in the program with operating a summer school.

(h) A statement that the private school shall comply with the requirements of subs. (8) and (9) prior to providing or contracting for pupil transportation.

(i) A statement that the private school shall obtain the risk management and insurance evaluation as required by sub. (10).

(j) A statement that the private school shall have a fidelity bond as required by sub. (11) by August 1 or prior to May 1 if the private school begins initial participation in the program with operating a summer school.

(13) A private school shall engage an auditor to provide a report to the department by December 15 attesting to the private school's compliance or non-compliance with the fiscal and internal control practices required by this section. The internal audit staff of an organization affiliated with the private school may, with prior approval of the department, provide the report required by this subsection if the internal audit staff meets independence standards identified in generally accepted government auditing standards. The report under this subsection shall meet all of the following requirements:

(a) The report shall be prepared in accordance with professional standards and identify the procedures agreed upon by the auditor and the department that were used in determining compliance or non-compliance. In making such a determination, the auditor may not rely on oral or written representations of the school's administration or staff.

(b) The report shall contain the private school's response as to its reasons for non-compliance with the requirements of this section and corrective action the school is taking.

NOTE: The Milwaukee parental choice program budget and anticipated cash flow form may be obtained from the Wisconsin Department of Public Instruction's website at www.dpi.state.wi.us/dpi/dfm/sms/finrpt.html or is available at no charge by writing to the Wisconsin Department of Public Instruction, School Management Services, P.O. Box 7841, Madison, WI 53707-7841.

PI 35.048 Going concern determination. (1) The following shall be considered indicators that a private school under this chapter may not meet the requirements of under s. 119.23 (7) (am) 2. or (d) 2., Stats., or have the financial ability to continue:

(a) The budget and statement of cash flows required under s. PI 35.047 (2) show the private school has inadequate revenues and other financial resources to fund current operations.

(b) The audit opinion statement required by s. PI 35.046 (1) (a) contains a qualification as to the private school's ability to continue as a going concern.

(c) Failure to make payments as required by s. PI 35.047 (3) or s. PI 35.047 (4) as identified in the notarized statement or report required by s. PI 35.047 (12) and (13) or a written communication from a vendor or employee.

(d) Failure to make filings with or withholdings payments to the federal internal revenue service as required by s. PI 35.047 (6) (a), to the Wisconsin department of revenue as required in s. PI 35.047 (6) (b), or to the Wisconsin department of workforce development as required by s. PI 35.047 (6) (c) is identified in a written communication from these agencies or in the notarized statement required under s. PI 35.047 (12) or report required by s. PI 35.047 (13).

(e) Audit reports provided as required in s. PI 35.047 (6) (f) contain questioned costs or compliance findings that may affect the private schools ability to continue.

(f) Failure of the private school to make payment to the department as required by s. PI 35.045 (1) (g) 3. or s. PI 35.04 (9) (f).

(2) A private school under this section shall provide to the department any information the department requires, including an audit of the private school's financial statements in accordance with generally accepted accounting principles, to determine the ability of the private school to continue financially and shall promptly notify the department of impairments in the private school's ability to finance its operations.

(3) A private school participating in the choice program shall notify the department immediately of a decision to cease educational program operations.

SECTION 15. PI 35.05 (2) is renumbered PI 35.05 (2) (a) and is amended to read:

PI 35.05 (2) (a) The department shall collect audits and reports under ~~s. PI 35.046~~ this chapter including those of membership eligibility of any or from all of the private schools participating under this chapter. The department shall rely on the information contained in audits and reports received under this chapter in its administration of the Milwaukee parental choice program and may make inquiries considered necessary to ascertain the accuracy of information contained in such audits or reports.

SECTION 16. PI 35.05 (2) (b) to (d) are created to read:

PI 35.05 (2) (b) An auditor engaged by the private school under this chapter shall respond directly to inquiries from the department and permit the department to review audit working papers prepared in support of the enrollment audits under s. PI 35.04, financial audit requirements under s. PI 35.046, and the report on fiscal practices under s. PI 35.047. The auditor shall provide copies of working papers as requested by the department. The auditor shall notify the private school of any such inquiries or requests and the auditor's response thereto.

(c) Information contained in auditor working papers and copies, or information provided the department by the private school under s. PI 35.046 (1) (g) shall be confidential and not open to public inspection. The department may only disclose information under this paragraph to the following:

1. The department of regulation and licensing as part of a referral for investigation as to the auditor's compliance with professional standards.

2. The appropriate staff of the legislative audit bureau, a district attorney, the department of justice or a law enforcement agency for the purposes of audit, investigation or prosecution.

(d) An auditor who fails to timely and properly fulfill auditing and reporting requirements under ss. PI 35.04, 35.046 and 35.047 may not be engaged for any purpose required under this chapter by a private school participating in the choice program in succeeding years until such time as the auditor provides evidence acceptable to the department that the auditor has made procedural changes and has had professional development training that will enable the auditor to comply with the requirements identified in this subsection.

SECTION 17. PI 35.05 (3) (b) (intro.) is amended to read:

PI 35.05 (3) (b) (intro.) The amount per pupil to be paid to the private school shall be determined as specified in s. 119.23 (4), Stats. No aid may be paid to a private school for a pupil unless the private school is providing educational programming and has met the requirements under ss. PI 35.03, 35.04, 35.043, 35.045, ~~and 35.046, 35.047 and 35.048~~. The payment schedule is as follows:

SECTION 18. PI 35.05 (3) (b) 1. to 5. are amended to read:

PI 35.05 (3) (b) 1. The September payment shall be based on the number of pupils receiving instruction at the beginning of the school year as indicated on the class list and the accepted, eligible applications for those pupils submitted under s. PI 35.04 (5) and the amount per pupil determined under s. 119.23 (4), Stats., multiplied by 25%. No September payment may be made to a private school that has ceased educational programming prior to the payment date.

PI 35.05 (3) (b) 2. The November payment shall be based on the number of pupils reported on the membership report and the accepted, eligible applications for those pupils submitted on October 1 under s. PI 35.04 (6) and the amount per pupil determined under s. 119.23 (4), Stats., multiplied by 50%, less the September payment. The November payment shall include any payments from the state for summer school instruction for choice program pupils at the school in the immediately preceding summer, as calculated under s. PI 35.043, divided by the number of pupils reported on the October 1 membership report. No November payment may be made to a private school that has ceased educational programming prior to the payment date.

3. The February payment shall be based on the number of pupils reported on the membership report and the accepted, eligible applications for those pupils submitted on February 1 under s. PI 35.04 (6) and the amount per pupil as determined under s. 119.23 (4), Stats., multiplied by 25%. No February payment may be made to a private school that has ceased educational programming prior to the payment date.

4. The May payment shall be based on the number of pupils reported on the membership report and the accepted, eligible applications for those pupils submitted on February 1 under s. PI 35.04 (6) and the amount per pupil as determined

under s. 119.23 (4), Stats., multiplied by 25%. No May payment may be made to a private school that has ceased educational programming prior to the end of its scheduled school term.

5. Any payment adjustment shall be made as specified under s. PI 35.045 (1) ~~(e)~~ (g) after the department has received and reviewed the audit opinion statement under s. PI 35.046 (1) (a).

SECTION 19. PI 35.05 (10) to (12) are created to read:

(10) (a) The state superintendent shall review information provided under s. PI 35.048 and make a determination as to the financial viability of the private school to continue to provide educational services to pupils enrolled under the Milwaukee parental choice program.

(b) The state superintendent shall notify a private school of a determination that the school is not financially viable.

(c) If the state superintendent determines that the private school does not have the financial ability to continue, that private school may not be permitted to participate in the choice program until the school provides acceptable information that it is financially viable to the state superintendent and the school's administrator has participated in fiscal management training as required by the department in addition to that specified in s. PI 35.047 (12).

(d) The state superintendent may require a private school determined to not have the financial ability to continue to immediately provide a surety bond, payable to the state of Wisconsin, to secure against loss due to failure of the private school to return checks as required in s. PI 35.04 (8), or to refund any amount certified due from the school in s. PI 35.04 (9) (f) or in s. PI 35.045 (1) (g) 3. The amount of bond required under paragraph shall be equal to 25% of the total current fiscal year payment amount as determined under s. 119.23 (4), Stats., and shall remain in force until the department is provided with financial statements for the private school prepared in accordance with generally accepted accounting principles that do not contain a qualified audit opinion or an expression of the auditor's doubt as to the private school's ability to continue as a going concern.

(11) The department may provide or participate in the providing of, training related to financial matters to private school staff and their auditors. The department may charge a reasonable fee for such training or participation in such training.

(12) (a) The state superintendent may issue an order barring a private school from participating in the choice program if the state superintendent determines that the private school has done any of the following:

1. Misrepresented information required under s. 119.23 (7) (d), Stats.
2. Failed to provide the notice required under s. 119.23 (2) (a) 3., Stats., by the date or within the time period specified.
3. Failed to provide the information required under s. 119.23 (7) (am), Stats., by the date or within the time period specified.
4. Failed to provide the information required under s. 119.23 (7) (d), Stats., by the date or within the time period specified.

5. Failed to refund to the state any overpayment made under s. 119.23 (4) (b) or (4m), Stats., by the date specified under ss. PI 35.04 (8) or (9) (f) or 35.045 (1) (g) 3.

6. Failed to meet at least one of the standards under s. 119.23 (7) (a), Stats., by the date specified under s. PI 35.03 (5).

7. Was barred or terminated from participation in the choice program under s. 119.23 (10), Stats., in the past.

8. Has an individual who is a disqualified person as an owner, officer, director, trustee, administrator, administrator designee, or with administrative, financial, or pupil health and safety responsibilities, whether compensated or uncompensated.

(b) The state superintendent may issue an order immediately terminating a private school's participation in the choice program if the state superintendent determines that conditions at the private school present an imminent threat to the health or safety of pupils.

(c) Whenever the state superintendent issues an order under this section, the state superintendent shall immediately notify the parent or guardian of each pupil attending the private school.

(d) The state superintendent may withhold payment from a parent or guardian under ss. 119.23 (4) and (4m), Stats., if the private school attended by the child of the parent or guardian violates s. 119.23, Stats.

The rules contained in this order shall take effect on the first day of the month commencing after the date of publication in the Wisconsin Administrative Register, as provided in s. 227.22(2)(intro.), Stats.

Dated this _____ day of September, 2005

Elizabeth Burmaster
State Superintendent